

**Introduced by Senator Schiff**

February 25, 2000

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An act to amend Sections 8714, 8714.5, 8714.7, and 8715 of the Family Code, and to add Section 366.265 to the Welfare and Institutions Code, relating to adoption.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 2157, as introduced, Schiff. Postadoption contact agreements.

Under existing law, when an adoption petition is granted and the adopting parent is a relative of the child or a relative of the child's half-sibling, a written agreement, designated as a "kinship adoption agreement," may be executed to permit continuing contact between the birth relatives and the child, as specified. Existing law also requires the State Department of Social Services or licensed adoption agency, whichever is a party to or joins in the petition for adoption, to submit a report addressing the facts of an adoption case; where there is a kinship adoption agreement, the report must also address whether the kinship adoption agreement is in the best interest of the child. A licensed adoption agency includes licensed county adoption agencies for purposes of these provisions.

Existing law provides that a child may be adjudged a dependent child of the juvenile court on the basis of abuse or neglect.

This bill would instead designate those agreements as "postadoption contact agreements." The bill would make these provisions applicable where the child is a dependent child of the juvenile court regardless of whether the adopting



parent is a relative of the child or a relative of the child's half-sibling. The bill would require that a postadoption contact agreement be attached to and filed with the petition for adoption. The bill would also authorize the court, prior to a hearing to free a dependent child of the court for adoption, to order the parties, as specified, to mediate the terms of a postadoption contact agreement. The bill would direct the Judicial Council to adopt specified rules of court and forms by July 1, 2001, and direct the State Department of Social Services to adopt specified regulations by July 1, 2002.

By authorizing agreements in additional cases, the instances in which local adoption agencies would be required to consider the effect of these agreements in connection with the adoption reports would be increased, thus creating a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 8714 of the Family Code is  
2 amended to read:

3 8714. (a) A person desiring to adopt a child may for  
4 that purpose file a petition in the county in which the  
5 petitioner resides. Where a child has been adjudged to be  
6 a dependent of the juvenile court pursuant to Section 300  
7 of the Welfare and Institutions Code, and has thereafter  
8 been freed for adoption by the juvenile court, the petition  
9 may be filed either in the county where the petitioner



1 resides or in the county where the child was freed for  
2 adoption.

3 (b) The court clerk shall immediately notify the  
4 department—~~at~~ in Sacramento in writing of the pendency  
5 of the proceeding and of any subsequent action taken.

6 (c) *If the petitioner has entered into a postadoption*  
7 *contact agreement with the birth parent as set forth in*  
8 *Section 8714.7, the agreement, signed by the*  
9 *participating parties, shall be attached to and filed with*  
10 *the petition for adoption described in subdivision (a).*

11 (d) The caption of the adoption petition shall contain  
12 the names of the petitioners, but not the child's name.  
13 The petition shall state the child's sex and date of birth.  
14 The name the child had before adoption shall appear in  
15 the joinder signed by the licensed adoption agency.

16 ~~(d)~~

17 (e) If the child is the subject of a guardianship petition,  
18 the adoption petition shall so state and shall include the  
19 caption and docket number or have attached a copy of  
20 the letters of the guardianship or temporary  
21 guardianship. The petitioners shall notify the court of any  
22 petition for guardianship or temporary guardianship filed  
23 after the adoption petition. The guardianship proceeding  
24 shall be consolidated with the adoption proceeding.

25 ~~(e)~~

26 (f) The order of adoption shall contain the child's  
27 adopted name, but not the name the child had before  
28 adoption.

29 SEC. 2. Section 8714.5 of the Family Code is amended  
30 to read:

31 8714.5. (a) The Legislature finds and declares the  
32 following:

33 (1) It is the intent of the Legislature to expedite legal  
34 permanency for children who cannot return to their  
35 parents and to remove barriers to adoption by relatives  
36 of children who are already in the dependency system or  
37 who are at risk of entering the dependency system.

38 (2) This goal will be achieved by empowering families,  
39 including extended families, to care for their own  
40 children safely and permanently whenever possible, by

1 preserving existing family relationships, thereby causing  
2 the least amount of disruption to the child and the family,  
3 and by recognizing the importance of sibling and  
4 half-sibling relationships.

5 (b) A relative desiring to adopt a child may for that  
6 purpose file a petition in the county in which the  
7 petitioner resides. Where a child has been adjudged to be  
8 a dependent of the juvenile court pursuant to Section 300  
9 of the Welfare and Institutions Code, and thereafter has  
10 been freed for adoption by the juvenile court, the petition  
11 may be filed either in the county where the petitioner  
12 resides or in the county where the child was freed for  
13 adoption.

14 *For purposes of this section, “relative” means an adult*  
15 *who is related to the child or the child’s half sibling by*  
16 *blood or affinity, including all relatives whose status is*  
17 *preceded by the words “step,” “great,” “great-great,” or*  
18 *“grand,” or the spouse of any of these persons, even if the*  
19 *marriage was terminated by death or dissolution.*

20 (c) Upon the filing of a petition for adoption by a  
21 relative, the county clerk shall immediately notify the  
22 State Department of Social Services in Sacramento in  
23 writing of the pendency of the proceeding and of any  
24 subsequent action taken.

25 (d) If the adopting relative has entered into a ~~kinship~~  
26 ~~adoption~~ *postadoption contact* agreement with the birth  
27 parent as set forth in Section 8714.7, the ~~kinship adoption~~  
28 agreement, signed by the *participating parties to the*  
29 ~~agreement~~, shall be attached to and filed with the ~~petition~~  
30 ~~for adoption under subdivision (b)~~ *petition*.

31 (e) The caption of the adoption petition shall contain  
32 the name of the relative petitioner. The petition shall  
33 state the child’s name, sex, and date of birth.

34 (f) If the child is the subject of a guardianship petition,  
35 the adoption petition shall so state and shall include the  
36 caption and docket number or have attached a copy of  
37 the letters of the guardianship or temporary  
38 guardianship. The petitioner shall notify the court of any  
39 petition for adoption. The guardianship proceeding shall  
40 be consolidated with the adoption proceeding.

(g) The order of adoption shall contain the child's adopted name and, if requested by the adopting relative, or if requested by the child who is 12 years of age or older, the name the child had before adoption.

SEC. 3. Section 8714.7 of the Family Code is amended to read:

8714.7. (a) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, and the child from entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, and the child if the agreement is found by the court to be in the best ~~interests~~ *interest* of the child at the time the adoption petition is granted. The terms of any ~~kinship adoption~~ *postadoption contact* agreement executed under this section shall be limited to, but need not include, all of the following:

(1) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings.

(2) Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both.

(3) Provisions for the sharing of information about the child in the future.

(b) At the time an adoption decree is entered pursuant to a petition filed under Section 8714 or 8714.5, the court entering the decree may grant postadoption privileges when an agreement for those privileges has been entered into pursuant to subdivision (a).

(c) This section is applicable only to ~~kinship adoption~~ *the following agreements*:

(1) *Postadoption contact* agreements in which the adopting parent is a relative of the child or a relative ~~to~~ of the child's half-sibling and the adoption petition is filed under Section 8714 or 8714.5. For purposes of this section ~~and Section 8714.5~~, "relative" means an adult who is related to the child or the child's half sibling by blood or

1 affinity, including all relatives whose status is preceded by  
2 the words “step,” “great,” “great-great,” or “grand,” or  
3 the spouse of any of these persons, even if the marriage  
4 was terminated by death or dissolution.

5 (2) *Postadoption contact agreements in which the*  
6 *child is a dependent child of the juvenile court who has*  
7 *been freed for adoption, whether or not the adopting*  
8 *parent is a relative of the child or a relative of the child’s*  
9 *half-sibling.*

10 (d) The child who is the subject of the adoption  
11 petition shall be considered a party to the ~~kinship~~  
12 ~~adoption~~ *postadoption contact* agreement. The written  
13 consent to the terms and conditions of the ~~kinship~~  
14 ~~adoption~~ *postadoption contact* agreement and any  
15 subsequent modifications of the agreement by a child  
16 who is 12 years of age and older is a necessary condition  
17 to the granting of privileges regarding visitation, contact,  
18 or sharing of information about the child, unless the court  
19 finds by a preponderance of the evidence that the  
20 agreement, as written, is in the best ~~interests~~ *interest* of  
21 the child. Any child who has been found to come within  
22 Section 300 of the Welfare and Institutions Code or who  
23 is the subject of a petition for jurisdiction of the juvenile  
24 court under Section 300 of the Welfare and Institutions  
25 Code shall be represented by an attorney for purposes of  
26 consent to the ~~kinship~~ ~~adoption~~ *postadoption contact*  
27 agreement.

28 (e) A ~~kinship~~ ~~adoption~~ *postadoption contact*  
29 agreement shall contain the following warnings in bold  
30 type:

31 (1) After the adoption petition has been granted by  
32 the court, the adoption cannot be set aside due to the  
33 failure of an adopting parent, a birth parent, a birth  
34 relative, or the child to follow the terms of this agreement  
35 or a later change to this agreement.

36 (2) A disagreement between the parties or litigation  
37 brought to enforce or modify the agreement shall not  
38 affect the validity of the adoption and shall not serve as  
39 a basis for orders affecting the custody of the child.

(3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

(f) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the ~~kinship—adoption~~ *postadoption contact* agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best ~~interests~~ *interest* of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best ~~interests~~ *interest* of the child may be protected or advanced only by ~~such~~ *that* inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (f) of this section.

(h) A ~~kinship—adoption~~ *postadoption contact* agreement may be modified or terminated only if either of the following occurs:

(1) All parties, including the child if the child is 12 years of age or older at the time of the requested termination or modification, have signed a modified ~~kinship—adoption~~ *postadoption contact* agreement and the agreement is filed with the court that granted the petition of adoption.



1 (2) The court finds all of the following:

2 (A) The termination or modification is necessary to  
3 serve the best-interests *interest* of the child.

4 (B) There has been a substantial change of  
5 circumstances since the original agreement was executed  
6 and approved by the court.

7 (C) The party seeking the termination or modification  
8 has participated, or attempted to participate, in good  
9 faith in mediation or other appropriate dispute resolution  
10 proceedings prior to seeking court approval of the  
11 proposed termination or modification.

12 Documentary evidence or offers of proof may serve as  
13 the basis for the court's decision. No testimony or  
14 evidentiary hearing shall be required. The court shall not  
15 order further investigation or evaluation by any public or  
16 private agency or individual absent a finding by clear and  
17 convincing evidence that the best-interests *interest* of the  
18 child may be protected or advanced only by ~~such an~~  
19 inquiry and that the inquiry will not disturb the stability  
20 of the child's home to the detriment of the child.

21 (i) All costs and fees of mediation or other appropriate  
22 dispute resolution proceedings shall be borne by each  
23 party, excluding the child. All costs and fees of litigation  
24 shall be borne by the party filing the action to modify or  
25 enforce the agreement when no party has been found by  
26 the court as failing to comply with an existing ~~kinship~~  
27 ~~adoption~~ *postadoption contact* agreement. Otherwise, a  
28 party, other than the child, found by the court as failing  
29 to comply without good cause with an existing agreement  
30 shall bear all the costs and fees of litigation.

31 (j) By July 1, ~~1998~~ *2001*, the Judicial Council shall adopt  
32 rules of court and forms for motions to enforce, terminate,  
33 or modify ~~kinship adoption~~ *postadoption contact*  
34 agreements.

35 (k) The court shall not set aside a decree of adoption,  
36 rescind a relinquishment, or modify an order to terminate  
37 parental rights or any other prior court order because of  
38 the failure of a birth parent, adoptive parent, birth  
39 relative, or the child to comply with any or all of the



original terms of, or subsequent modifications to, the  
~~kinship-adoption~~ *postadoption contact* agreement.

SEC. 4. Section 8715 of the Family Code is amended  
to read:

8715. (a) The department or licensed adoption  
agency, whichever is a party to or joins in the petition,  
shall submit a full report of the facts of the case to the  
court.

(b) If the child has been adjudged to be a dependent  
of the juvenile court pursuant to Section 300 of the  
Welfare and Institutions Code, and has thereafter been  
freed for adoption by the juvenile court, the report  
required by this section shall describe whether the  
requirements of subdivision (e) of Section 16002 of the  
Welfare and Institutions Code have been completed and  
what, if any, plan exists for facilitation of postadoptive  
contact between the child who is the subject of the  
adoption petition and his or her siblings and half-siblings.

(c) Where a petition for adoption by a relative has  
been filed with a ~~kinship-adoption~~ *postadoption contact*  
agreement pursuant to Section 8714.7, the report shall  
address whether the ~~kinship-adoption~~ *postadoption*  
*contact* agreement is in the best interest of the child who  
is the subject of the petition. The department may also  
submit a report in those cases in which a licensed  
adoption agency is a party or joins in the adoption  
petition.

SEC. 5. Section 366.265 is added to the Welfare and  
Institutions Code, to read:

366.265. Prior to any hearing to terminate parental  
rights for the purpose of freeing a child for adoption  
pursuant to Section 366.26, the court may order the birth  
parent or parents, the child, the department, and the  
adoptive parent or parents to mediate the terms of a  
postadoption contact agreement, as provided in Section  
8714.7 of the Family Code, if the court, in its discretion,  
finds that such an agreement would be in the best interest  
of the child.

1 SEC. 6. The State Department of Social Services shall  
2 adopt regulations as necessary to implement the  
3 provisions of this act no later than July 1, 2002.

4 SEC. 7. Notwithstanding Section 17610 of the  
5 Government Code, if the Commission on State Mandates  
6 determines that this act contains costs mandated by the  
7 state, reimbursement to local agencies and school  
8 districts for those costs shall be made pursuant to Part 7  
9 (commencing with Section 17500) of Division 4 of Title  
10 2 of the Government Code. If the statewide cost of the  
11 claim for reimbursement does not exceed one million  
12 dollars (\$1,000,000), reimbursement shall be made from  
13 the State Mandates Claims Fund.

